83-1505

No. _____

In the
Supreme Court of the United States
OCTOBER TERM, 1984

THE CITY OF LOS ANGELES, a municipal corporation, et al.,

Appellants,

vs.

COUNTY OF LOS ANGELES, et al.,

Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF CALIFORNIA

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED BY APPEAL

May a county provide municipal-type services which are financed by county-wide local revenues, predominately attributable to incorporated areas, without charge to unincorporated areas of the County while incorporated areas are charged by the County for such services or provide their own?

LIST OF ALL PARTIES

The appellants herein are the City of Los Angeles, a municipal corporation; Tom Bradley as Mayor of the City of Los Angeles; Ernani Bernardi; Marvin Braude; David S. Cunningham; John Ferraro; Donald D. Lorenzen; Louis R. Nowell; Pat Russell; Arthur K. Snyder and Robert M. Wilkinson, as taxpayers and present or former members of the City Council of the City of Los Angeles.

The appellees herein are the County of Los Angeles; Board of Supervisors of the County of Los Angeles; Harry L. Hufford, Chief Administrative Officer of the County of Los Angeles; Mark Bloodgood, Auditor-Controller of the County of Los Angeles; and Peter J. Pitchess, former Sheriff for the County of Los Angeles (hereinafter referred to collectively as "County").

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JURISDICTIONAL STATEMENT

Appellants appeal from the final judgment of the Supreme Court of the State of California, after order entered December 14, 1983, denying appellants' Petition For Hearing from the decision of the Court of Appeal denying appellants' Petition For Rehearing on October 28, 1983. The Court of Appeal concluded that State of California tax statutes were not repugnant to the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. The requirements of 28 U.S.C. § 2403(b) may be applicable.

OPINIONS BELOW

The opinion of the Superior Court of the State of California for the County of Los Angeles, in which this case was heard, is not officially reported. Copies of the opinion and the Superior Court's orders appear in Appendix "A" hereto. The opinion of the Court of Appeal of the State of California, filed on October 11, 1983, is officially reported at 147 Cal.App.3d 952 (1983), and appears at Appendix "B" hereto. The Court of Appeal's order denying appellants' Petition For Rehearing is unreported and appears in Appendix "C" hereto. The order of the Supreme Court of California denying appellants' Petition For Hearing is reported in the Minutes of the Supreme Court for December 14, 1983, in volume 35, California Reports and appears in Appendix "D" hereto.

JURISDICTION

This is an appeal from a final judgment of the Supreme Court of the State of California which sustained the decision of the Court of Appeal. The trial court found a violation of the equal protection clause of the Fourteenth Amendment and found no violation of due process. The Court of Appeal reversed the decision of the trial court and held the action moot as a result of the passage of Article XIIIA of the California Constitution.[1]

Appellants are taxpayers in an incorporated area of the County. The statutes, as applied to appellants, allow the County to expend revenues, generated county-wide, in order to provide municipal-type services to unincorporated areas which are not similarly provided to incorporated areas.

A notice of appeal to this Court from the final judgment of the California Supreme Court was timely filed with the

[1]This article is popularly referred to as Proposition 13.

Clerk of the Appellate Court of the State of California on February 11, 1984. A copy appears at Appendix "E" hereto. This appeal is being docketed in this Court within 90 days from December 14, 1983, the date of entry of final judgment below.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1. The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> "No state shall . . . deprive any person of life, liberty or property, without due process of law; nor deny . . . the equal protection of the laws . . . ."

2. Article XIIIA, section 1 of the California Constitution provides, in pertinent part:

> "The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and *apportioned* according to law . . . ." (Emphasis added.)

3. California Government Code, section 26,912 is set forth in Appendix "F" hereto.

4. California Revenue and Tax Code, sections 93, 95, 96 and 100, are set forth respectively in Appendix "G" hereto.

STATEMENT OF THE CASE

Appellants challenge the constitutionality of the practice, utilized by the County, of allocating county-wide local revenues, predominately composed of property taxes, to finance municipal-type services for residents of unincorporated areas of the County. It is appellants' position that

this practice requires the residents of incorporated areas to subsidize the municipal-type services provided by the County to the unincorporated areas in contravention of the equal protection and due process clauses of the Fourteenth Amendment. Appellants' argument is predicated on the fact that such non-uniform services are financed by county-wide local funds to which all County taxpayers contribute.

After a lengthy hearing, the Los Angeles Superior Court ordered that the County be enjoined from "financing the providing of non-uniform services such as Sheriff's patrol and station detectives, County Engineer, Park and Recreation . . . to the unincorporated areas of the County of Los Angeles through the use of property tax revenues, which are generated uniformily (sic) throughout the County." (App. 20a.)

Notwithstanding the Superior Court's finding, after extensive analysis, that Article XIIIA of the California Constitution had no impact on its decision, the Court of Appeal reversed the judgment on the ground that Article XIIIA rendered the action moot (App. 4a, 5a).

THE QUESTION PRESENTED IS SUBSTANTIAL

This case raises the substantial and unsettled constitutional issue of whether a county may discriminate in providing municipal-type services (predominately police protection) to unincorporated areas while financing such services from local revenues generated county-wide (App. 14a).

The inequity of this financing system becomes apparent when the origin of County local revenues is considered. Property taxes account for fifty percent or more of the total County local revenues depending on the fiscal year. Of the total revenues generated by property taxes, approxi-

mately eighty-five percent are attributable to cities.[2]

This case is important since it involves due process and equal protection rights of taxpayers in incorporated cities to object to the County's non-uniform provision of services to unincorporated areas while financing these services from county-wide revenues (App. 4a, 14a).

The reciprocal of the instant financing scheme has been held to violate federal due process and equal protection on the precise grounds asserted by appellants herein. *Richmond County v. Richmond County Business Ass'n.*, 185 S.E.2d 399 (1971). The Georgia Supreme Court in *Richmond, supra* at 401, considered and found unconstitutional a county ordinance which levied a business tax county-wide, but exempted businesses in a municipality. The exempted municipality, however, received the benefit of county services. The Court stated:

> "It is shown in the instant case that the ordinance levies taxes only on those businesses in Richmond County located outside a municipality. However, the revenue therefrom is received into the treasure for the support of general county governmental functions such as to the courts, sheriff's office, tax commissioner, etc., which provide service for all residents of the county whether within or without the municipalities. The burden of the tax is classified geographically without any particular reason therefor. There being no reasonable basis for such classification, we agree with the trial court that it violates the due process and equal protection clause of the Fourteenth Amendment of the United States Constitution . . . ."
> *Id.*

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[2]These figures were derived from exhibits introduced into evidence at the trial.

The question before this Court has been addressed by courts in other states, albeit upon different grounds. In *Salt Lake City Corp. v. Salt Lake County*, 550 P.2d 1291 (1976), the Supreme Court of the State of Utah directed a trial court to enjoin the furnishing of municipal services to unincorporated areas of the county until the county either levied a property tax in the unincorporated area or imposed a charge to the persons benefited thereby. This procedure was contained in a Utah statute.

In *Alsdorf v. Broward County*, 333 So. 2d 457 (1976), the Florida Appellate Court held that property situated within a municipality is not subject to taxation for services rendered by a county for the exclusive benefit of property or residents in unincorporated areas. Also, the Florida Court in *Manatee County v. Town of Longboat Key*, 352 So. 2d 869 (1977), held that certain municipalities could recover taxes paid by their property owners which went to finance services rendered by a county for the exclusive benefit of unincorporated areas. These Florida Court decisions relied upon a state constitutional provision prohibiting the taxation of property within a municipality for county services rendered exclusively to unincorporated areas.

The foregoing state court decisions have recognized a basic unfairness in requiring incorporated areas to subsidize services provided to unincorporated areas. This inherent unfairness is tantamount to a violation of equal protection and due process.

I.

IMPORTANT EQUAL PROTECTION RIGHTS ARE INVOLVED

Under the present taxing scheme the County's discriminatory financing of services to unincorporated areas violates the uniformity requirements of equal protection.

Wood v. County of Calaveras, 164 Cal. 398 (1912); *Campbell County v. Newport*, 174 Ky. 712, 193 S.W. 1 (1917). The County's taxing scheme violates this uniformity requirement since the County levies the same property tax rate on the residents of both incorporated and unincorporated areas (App. 45a). However, the inhabitants of the incorporated areas do not receive the municipal-type services provided to unincorporated areas.

This Court in *Foster v. Pryor*, 189 U.S. 325 (1903), upheld a disproportionate taxing scheme between an Indian reservation and a county as not invalid for want of uniformity. The taxing scheme was justified because the Indian reservation did not receive the same benefit from taxes as did the county. Thus, a proportionate relationship must be maintained between the tax exacted and the benefit provided.

Further, the present financing scheme is violative of the equal protection clause of the Fourteenth Amendment because appellants are treated differently from taxpayers of unincorporated areas. Although both groups of taxpayers pay the same general County property tax rate (App. 41a), the taxpayers of unincorporated areas receive additional benefits from the County in the form of municipal-type services. The cities must tax their citizens in order to provide similar municipal services. Thus, the County's practice is inherently unfair.

The absence of a rational basis to support this geographic discrimination constitutes a violation of equal protection. See *City of New York v. Richardson*, 473 F.2d 923 (2nd Cir. 1973), *cert. denied*, 412 U.S. 950 (1973); *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973). Indeed, in order to satisfy the equal protection requirement, a legislative classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation

to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Reed v. Reed*, 404 U.S. 71, 76 (1971). See also *McDonald v. Board of Elections*, 394 U.S. 802, 809 (1969). In order to achieve similar treatment between residents in incorporated and unincorporated areas, the County should not provide non-uniform services without reimbursement.

Not only must the County articulate a rational basis in order to support the instant classification, it must demonstrate a compelling interest as required by strict scrutiny. Strict scrutiny is appropriate when, as here, the discriminatory treatment of people is based upon "suspect criterion" (*Bolling v. Sharpe*, 347 U.S. 497 (1954)) and the involvement of a fundamental interest (*Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966)). The suspect criterion herein involved is that of wealth: poorer areas (the cities) are subsidizing richer areas (the unincorporated areas)[3] (App. 13a). *Serrano v. Priest*, 5 Cal.3d 584, 597, 94 Cal.Rptr. 601 (1971).

The California Supreme Court in *Serrano, supra*, relied upon United States Supreme Court decisions in holding a classification based upon wealth violative of the equal protection clause:

> "In recent years, the United States Supreme Court has demonstrated a marked antipathy toward legislative classifications which discriminate on the basis of certain 'suspect' personal characteristics. One factor which has repeatedly come under the close scrutiny of the high court is

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[3] Appellants' Exhibit 24, introduced into evidence at trial, established that the percent of persons below the poverty level in the City of Los Angeles is 13% as compared with 10% in the unincorporated area of the County. Also, the percent of families receiving welfare in the City of Los Angeles is 9.9% as compared with 7.9% in the unincorporated area.

> wealth. 'Lines drawn on the basis of wealth or property like those of race [citation], are traditionally disfavored.' (*Harper v. Virginia Bd. of Elections* (1966) 383 U.S. 663, 668 [16 L.Ed.2d 169, 173, 86 S.Ct. 1979]. Invalidating the Virginia poll tax in *Harper*, the court stated: 'To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor.' (*Id.*) '[A] careful examination on our part is especially warranted where lines are drawn on the basis of wealth . . . [a] factor which would independently render a classification highly suspect and thereby demand a more exacting judicial scrutiny. [Citations.]' (*McDonald v. Board of Elections* (1969) 394 U.S. 802, 807 [22 L.Ed.2d 739, 744, 89 S.Ct. 1404].)"
> *Id.*

The fundamental interest herein involved is that of police protection. Although the issue of whether police protection is a fundamental right is undecided, the preservation of an ordered society is the most fundamental function of government. *Hawkins v. Town of Shaw*, 437 F.2d 1286 (5th Cir. 1971).

The instant classification is also subject to review under the "sliding scale" test[4] which examines the "substantiality of the state interest sought to be served", and "the reasonableness of the means by which the state sought to advance its interests." *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 98 (1973) (Marshall, J., dissenting). This intermediate level of review has been

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[4]See Simon, *A Method For Analyzing Discriminatory Effects Under The Equal Protection Clause*, 29 Stan. L. Rev. 663 (1976-1977).

judicially adopted in New York. *Board of Education, Levittown Union Free School District v. Nyquist*, 408 N.Y.S.2d 606, 636 (1978). The County cannot delineate any "state interest sought to be served" by its discriminatory conduct.

The County's practice, under any of the foregoing tests, violates the equal protection clause since the County has not articulated any state interest in maintaining the instant discriminatory practice. Indeed, it is the California Legislature's intention and declared policy that unincorporated areas should absorb the costs of municipal-type services provided to them by counties. The legislative declaration set forth in California Government Code § § 25,210.1 *et seq.*, provides in pertinent part:

> "The legislature hereby finds and declares that unprecedented growth in the unincorporated areas of a great many counties in California, particularly since 1940, has created many new and difficult problems of government. As a result of large population growth and intensive residential, commercial, and industrial development in such areas, extended governmental services are needed in such areas.
>
> "The legislature recognizes the duty of counties as instrumentalities of State Government to adequately meet the needs of such areas for extended governmental services and *also recognizes that such areas should pay for the extended services which are provided* . . . ." (Emphasis added.)
>
> Gov't. Code., section 25,210.1

Thus, the failure of the County to expouse even a rational basis for the discriminatory scheme of financing non-uniform services to unincorporated areas runs afoul

of the equal protection clause of the United States Constitution.

II.

IMPORTANT DUE PROCESS RIGHTS ARE INVOLVED

The test of whether a deprivation of property has occurred without due process was succinctly stated by this Court in *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 444 (1940):

> "That test is whether property was taken without due process of law, or, if paraphrase we must, whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. The simple but controlling question is whether the state has given anything for which it can ask return . . . ."
> *Id.*

The instant taxing scheme provides the benefit of municipal-type services to the unincorporated areas of the County while excluding them from the incorporated areas. Appellants are thereby denied due process because they are taxed by the County without the benefit of substantial County services. The mere fact that incorporated areas may be incidently benefited from the County's provision of municipal services to unincorporated areas is inadequate justification to withstand a due process attack as an unconstitutional taking of property. Indeed, if a city were to tax property outside its boundaries because such property received the remote benefit of being situated next to a well-policed city, such would clearly constitute a taking of property without due process of law. See *Myles Salt Co. v. Bd. of Commissioners*, 239 U.S. 478, 483 (1916), *Union Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194 (1905).

The due process clause demands that the taxes exacted from taxpayers in incorporated areas not be selectively expended to provide services to inhabitants of unincorporated areas. Thus, the County is constitutionally prohibited from taxing incorporated areas for police and other municipal-type services that are not similarly provided to them.[5]

III.

THE ACTION HAS BEEN DETERMINED ON INSUBSTANTIAL STATE GROUNDS

The California Appellate Court's decision, which was sustained by the California Supreme Court's denial of Petition For Hearing, held that Article XIIIA of the California Constitution rendered the instant action moot. The effect of Article XIIIA was to establish a maximum property tax rate and to provide for the collection of property taxes on a county-wide basis.

The Appellate Court focused upon the fact that at the time the instant action was filed there existed a municipal and county property tax (App. 28a). The court erroneously reasoned that, since Article XIIIA eliminated municipal property taxes, the taxing scheme, which was the subject of the contest before the trial court, had been dismantled. The decision of the California Appellate Court lacks substance in view of the trial court's extensive findings with respect to the effect of Article XIIIA (App. 4a, 5a, 12a). The trial court held:

> ". . . [W]ith the adoption of California Constitution Article XIII A, the County is required

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[5]The specific facts of this case were the subject of an extensive Comment: Lerman, *Ad Valorem Financing of Law Enforcement Services: An Equitable Solution To An Inequitable Condition*, 19 UCLA L. Rev. 59 (1971). The writer of this article concluded that there had been a violation of due process.

> to levy a property tax at the rate of four dollars ($4.00) per one hundred dollars ($100.00) of assessed value . . . . Article XIII A and its implementing legislation allocate property tax revenues on a *pro rata basis* dictated by the property tax system in existence prior to Article XIIIA . . . ." (Emphasis added).
> (App. 4a.)

Indeed, the sole effect of Article XIIIA was to place a ceiling on property taxes. The trial court concluded that:

> "The voter approval of Proposition 13 at the June 6, 1978, election did not moot the instant case." (App. 16a.)

In support of appellants' argument, another California Appellate Court, when presented with similar facts, arrived at a contrary conclusion regarding mootness. *City of Santa Barbara, et al. v. County of Santa Barbara, et al.*, 94 Cal.App.3d 277, 156 Cal.Rptr. 320 (1979). In *City of Santa Barbara, supra* at 281, the Court held that under the County Service Area Law (California Gov't Code § 25,210.1 *et seq.*) sheriff's patrol services in unincorporated areas should not be financed from general county funds. The Court also held that the passage of Article XIIIA did not render the action moot.

> ". . . [T]he decision whether to create a county service area is not related to any consideration of existing tax revenues or the source of those revenues, but is a function solely of a factual determination whether specified services or the level of those services are being provided throughout the county on a uniform basis both within and without cities.
>
> "How the service area will be financed once it is formed is a separate question, one to be

> resolved subsequently to formation and one upon the answer to which creation of the service area does not depend . . . ."
> 94 Cal.App.3d at 278.

The Court in *City of Santa Barbara, supra* at 287, ftn. 6, commented:

> "For this reason, appellants' contention [that] the addition of Article XIII A to our state constitution precludes the relief sought by respondents and has rendered the matter moot is not well taken."

Notwithstanding the passage of Article XIIIA the fact remains that the County is financing non-uniform services from general county-wide local funds in the same manner as it did prior to the passage of Article XIIIA. This fact was ignored by the Appellate Court in reaching its conclusion that the instant matter was moot. The inequity sought to be redressed by appellants' complaint was the County's provision of non-uniform services to unincorporated areas without charge. Article XIIIA has no effect upon this practice.

The finding of mootness by the California Appellate Court and the sustaining of the decision by the California Supreme Court is not binding upon this Court. In *Liner v. Jafco, Inc.*, 375 U.S. 301, 304 (1964), this Court rejected the respondent's challenge to jurisdiction on the grounds that the state court held the case moot since "the question of mootness is itself a question of federal law upon which we must pronounce final judgment." See also *Williams v. N. Shaffer*, 385 U.S. 1037 (1967) (Douglas, J., dissenting).

CONCLUSION

For the reasons set forth above, probable jurisdiction should be noted.

Dated: March 6, 1984.

Respectfully submitted,

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APPENDIX

APPENDIX "A"

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

CITY OF LOS ANGELES, et al., Plaintiffs, vs. THE COUNTY OF LOS ANGELES, et al., Defendants.	NO. C 109,771 FINDINGS OF FACT AND CONCLUSIONS OF LAW Honorable Max F. Deutz Dept. 54

PRELIMINARY STATEMENT

The above cause came on regularly for trial on March 31, 1978, in Department 54 of the above entitled Court, the Honorable Max F. Deutz, Judge, presiding, sitting without a jury.

The plaintiffs appeared by their attorneys of record, Burt Pines, City Attorney, Thomas C. Bonaventura, Senior Assistant City Attorney, by Richard Dawson, Assistant City Attorney. The defendants appeared by their attorney of record, John H. Larson, County Counsel, by Roger M. Whitby, Principal Deputy.

Trial was held on March 31, April 3 and 4, 1978 wherein oral and documentary evidence was introduced. The parties submitted post-trial briefs and on March 12, 1980, the Court announced its intended decision pursuant to Rule 232, California Rules of Court, by written notice of its minute order to the attorneys of record. Attorneys for the defendants timely filed a request for Findings of Fact and Conclusions of Law.

The Court having considered the oral and documentary evidence and the post-trial briefs, and being fully advised in the premises now makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff, the City of Los Angeles, is a municipal corporation organized under and existing by virtue of the laws of the State of California, and had, within the year prior to the commencement of this action, been assessed for and paid a property tax to the County of Los Angeles.

2. Plaintiff Tom Bradley is the Mayor of the City of Los Angeles; plaintiffs Ernani Bernardi, Marvin Braude, David S. Cunningham, John Ferraro, Pat Russell, are members of the City Council of the City of Los Angeles; plaintiffs Louis R. Nowell and Robert M. Wilkinson, were members of the City Council of the City of Los Angeles; and the plaintiffs named in this paragraph are citizens of the United States and of the State of California, residents of the City of Los Angeles and the County of Los Angeles, and each had, within the year prior to the commencement of this action, been assessed for and paid a property tax to the County of Los Angeles and the City of Los Angeles.

3. Defendant County of Los Angeles is a political subdivision of the State of California.

4. Defendant Board of Supervisors of the County of Los Angeles is the governing body of the County of Los Angeles.

5. Defendant Harry L. Hufford is the Chief Administrative Officer of the County of Los Angeles.

6. Defendant Mark Bloodgood is the Auditor-Controller of the County of Los Angeles.

7. Defendant Peter J. Pitchess is the Sheriff of the County of Los Angeles, and is charged with the duty of rendering and does render law enforcement services throughout the County of Los Angeles. Because some cities in the county have their own police departments, the sheriff does not provide them with the same level of service as is necessary in the unincorporated territory of the county or in cities which contract with the sheriff for law enforcement services.

8. The defendant, County of Los Angeles, acting through the other defendants, provides certain services to all parts of the County, whether incorporated or unincorporated area, such as courts, hospitals, welfare, health and jails. These services are designated as "uniform services" because they are provided countywide without special charge to taxpayers of incorporated or unincorporated areas.

9. The defendant, County of Los Angeles, acting through the other defendants, provides certain municipal-type services to unincorporated areas of the County where charges are made for the service or improvement. Some such services are roads, street lighting, sanitation, structural fire protection, and sewer maintenance. Prior to the adoption of California Constitution Article XIII A, the County created a district to provide such services and charged a property tax within the district to finance the services. Currently, such district services are financed by

a distributive share of the $4.00 rate levied County-wide or charges.

10. The defendant, County of Los Angeles, acting through the other defendants, also provides such services as Sheriff's Patrol and Detective services, County Engineer, Animal Control, Regional Planning, and local parks in the unincoproated areas. These services are designated as "non-uniform services" because they are not provided to the same extent in cities as in unincorporated areas.

11. The expense of the County of Los Angeles in providing uniform and non-uniform services is financed to a substantial degree by the use of County general revenues. A significant element of County general revenues is the County general property tax.

12. Prior to the adoption of California Constitution Article XIII A, the County general property tax was assessed at the same rate in both the incorporated and unincorporated areas of the County. Property tax revenues went to the County general fund and were used for the payment of uniform and non-uniform services. The plaintiffs and other property taxpayers of the incorporated areas in the County of Los Angeles at the same time were assessed and paid city property taxes for municipal services which were provided by their own city jurisdictions.

13. With the adoption of California Constitution Article XIII A, the County is required to levy a property tax at the rate of four dollars ($4.00) per one hundred dollars ($100.00) of assessed value. Local agencies are prohibited from levying a property tax with certain exceptions. The revenue from the County levied tax must be apportioned and distributed to local agencies, which include cities, the County, and special districts. California Constitution Article XIII A; California Revenue and Taxation Code Section 2237. For the 1978-79 fiscal year each local agency share of property tax was determined by

a three year average of each local agency property tax revenue received within the county, divided by the three year average amount of property taxes received by all such agencies. California Government Code Section 26,912. For fiscal 1979-80 property tax revenues were allocated to local agencies pursuant to Section 26,912 of the Government Code used for the 1978-79 fiscal year, with possible adjustments. California Revenue and Taxation Code Section 96(a). For fiscal 1980-81 and thereafter, property tax revenues shall be allocated to local agencies in amounts equal to current distributions and future increase dependent on tax-rate areas. California Revenue and Taxation Code Section 97. Local agencies may reduce their proportionate share of the $4.00 tax rate for property within their jurisdiction. California Revenue and Taxation Code Section 100. Article XIII A and its implementing legislation allocate property tax revenues on a *pro rata basis* dictated by the property tax system in existence prior to Article XIII A. *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization,* 22 Cal.3d 208, 226 (1978). Each local agency, cities, special districts, and the County, control their proportionate share of the maximum $4.00 rate. California Revenue and Taxation Code Section 100.

14. For over 30 years taxpayers and residents of cities have been contending it is unfair for California counties to finance municipal-type services to urban unincorporated areas from county general property taxes.

15. In 1969 and 1970, the County of Los Angeles and the City of Los Angeles undertook the joint development of statistical data relative to the allegations that city property taxpayers were subsidizing the furnishing of non-uniform services to unincorproated areas of the County. The City concluded that for the County's fiscal year 1968-69 appropriations in excess of revenue for non-uniform services in the unincorporated areas amounted to approxi-

mately $20,000,000. The County concluded that for the County's fiscal year 1968-69, the cost of non-uniform County services rendered to unincorporated areas exceeded revenues from those areas by approximately $5,000,000.00.

16. In Exhibits 1 and 2 at the trial (Reports from City Administrative Officer and County Chief Administrative Officer re: Tax Inequity Study) the County and the City of Los Angeles agreed on a methodology to determine whether in fact a tax inequity existed. The County and the City considered the total County Budget for 1968-69. Special district appropriations were subtracted from the total budget on the theory that they were self-supporting from special tax levies within the districts. County departments were defined as either uniform, non-uniform, or service department. Revenues used to finance uniform services were ascertained in order to isolate revenues applicable to non-uniform services. It was assumed that uniform services should be financed first with direct aid from other governmental agencies, secondly with specific fees and charges, and thirdly, with property tax revenue. The non-uniform departments were allocated between the incorporated and unincorporated areas basically on the factors of assessed valuation (13.42% in unincorporated area) or population (14.56% in unincorporated area), except for Retirement, County Engineer, Motor Vehicles, Workmens' Compensation, Sheriff, Fire Warden, Animal Control, Regional Planning Commission, and Parks and Recreation. Aid from other governmental agencies, fees, and specific revenue were deducted from the gross appropriation for each department to arrive at a net "Total financed from General County Revenue." Then general County revenues were allocated to the unincorporated and incorporated areas on the basis of assessed valuation (13.42% for unincorporated area) or population (14.56% for unincorporated area), except for revenue derived from

the unincorporated area only, such as sales taxes, franchises, cigarette tax, transient occupancy tax, and alcoholic beverage business, which were allocated entirely to the unincorporated area. The non-uniform costs attributed to the unincorporated area exceeded the general County revenues attributed to the unincorporated area by $20,000,000.

17. Using the same approach developed jointly by the County and the City of Los Angeles in their 1970 reports (Exhibits 1 and 2), the City applied the same methodology to subsequent fiscal years with the following results (Exhibits 3 through 8):

Year	Subsidy
1969-70	$20,890,896
1970-71	$29,904,829
1971-72	$33,259,137
1972-73	$38,257,330
1973-74	$35,859,262
1976-77	$41,600,220

18. In Exhibits 1 and 2 both the County and City of Los Angeles applied a factor of 52.7% to the Sheriff's budget as representing cost to the unincorporated area. The Sheriff's budget for institutions was considered as a uniform countywide service. The Civil Division was included under non-uniform services but was allocated on a population basis (14.56%) on the assumption that it was a uniform activity. The Detective Division was allocated 42.5% to the unincorporated area. The Technical Division was allocated 31.1% to the unincorporated area. The Patrol Division was allocated 53.77% to the unincorporated area.

19. For the fiscal year 1968-69 the County and the City of Los Angeles allocated non-uniform Sheriff costs to the unincorporated area in the amount of $22,323,813.

Following the same methodology for the fiscal year 1970-71 the City allocated $33,649,608 in Sheriff's non-uniform costs to the unincorporated area (Exhibit 4, page 4), while for the same period the Booz, Allen and Hamilton Report allocated $32,295,868 in such costs (Exhibit 12, page 99). Using the same methodology for the fiscal year 1972-73 the City allocated $44 million plus to the unincorporated area for Sheriffs' non-uniform services (Exhibit 6, page 4), while for the same period the County Chief Administrative Officer allocated $47,366,045 (Exhibit A to trial Exhibit 11, Report to Board of Supervisors dated May 21, 1973) for sheriff non-uniform services.

20. Schedule 10 to the City Report (Exhibit 1) and Exhibit G to the County Report (trial Exhibit 2) indicate the following allocation percentages to the unincorporated area were arrived at for the reasons stated in Schedule 10:

Retirement	20.53%
Motor Vehicles	25.19%
Workers' Compensation	25.80%
Sheriff	52.7 %
Forester and Fire Warden	22.00%
Animal Control	49.00%
Regional Planning Commission	74.80%
Parks and Recreation	38.50%
County Engineer	45.60%

21. A most exhaustive and detailed study of costs relating to the Los Angeles Sheriff's Department is the Booz, Allen and Hamilton Report, dated February, 1971 (Exhibit 12). This report developed a methodology for costing service units of the Sheriff's Office whether provided countywide, to the unincorporated area, or to contract cities. In the report all of the acitvities of the Sheriff were classified as countywide, unincorporated area or contract city (page 46). In Exhibit 3 to the report

(page 11) it was determined that the Sheriff for the fiscal year 1970-71, out of 126 general law patrol service units, assigned 96.66 to the unincorporated area. A service unit was and is one staffed car around the clock. Out of 349 station detectives 204 were allocated to the unincorporated area. On page 99 of the report it was determined that for the fiscal year 1970-71, $32,295,868 of Sheriff's costs for other than countywide services were provided to the unincorporated area. Exhibit 19(1), (2), (3), and (4) to the report (pages 95-98) details the allocation of Sheriff's costs for all services throughout the County. In trial Exhibit 4, for the fiscal year 1970-71, the City, based on the 1970 agreed methodology, allocated $33,649,608 in Sheriff's non-uniform costs to the unincorporated area.

22. The County Chief Administrative Officer, in a report to the Board of Supervisors, dated March 29, 1971 (Exhibit 10), which was highly complimentary of the Booz, Allen and Hamilton Report (page 3 of trial Exhibit 10 and page 1 of Exhibit B to trial Exhibit 10), recommended that the Report be adopted as the pricing model for Sheriff's services to contract cities with slight modifications (page 4, No. 4). The Board of Supervisors adopted the recommendation and the pricing model is currently the basis of charges to contract cities as modified by the County subsequently and the Gonsalves bill (Government Code Section 51350). In the County March 29, 1971 report (Exhibit 10), the County Chief Administrative Officer also recommended, on page 5, no. 6, that the County evaluate the feasibility of creating police protection districts which has not been done.

23. In Exhibit A attached to the May 21, 1973, report of the County Chief Administrative Officer (trial Exhibit 11), County personnel detailed the cost of all sheriff services by organization unit for fiscal 1972-73 costs. Sheriff services were determined to be countywide,

partially countywide, and not available countywide. Costs were allocated as countywide, unincorporated areas and contract cities. County personnel concluded that $46,366,045 was the cost of services provided to the unincorporated area only. This amount included $40 million which related to general law patrol and station detectives. The County $47 million cost figure compares favorably with the $44 million cost figure ascertained by the City in Exhibit 6 for the same fiscal year 1972-73, based on the original methodology contained in the 1970 reports of the City and County (Exhibits 1 and 2).

24. City studies (Exhibits 3-8) based on the same methodology as that used in the original 1970 reports (Exhibits 1 and 2) found that the cost of non-uniform services in subsequent years substantially exceeded in amount the revenues collected in the unincorproated area of the County for those years. The Booz, Allen and Hamilton report (Exhibit 12) and a report to the County Board of Supervisors from its Chief Administrative Officer, dated May 21, 1973, (Exhibit 11) substantiate the validity of the original methodology used to determine the cost of County law enforcement services provided to the unincorporated area.

25. In the 1973 County study of the 1972-73 fiscal year conducted by the County Chief Administrative Office (Exhibit 11), the County attributed $47,366,045 in costs, out of a Sheriff's budget of $100,572,951 which did not include Jails and Corrections Divisions, to the unincorporated area. The County found that 47% of the Sheriff's budget, exclusive of Jails and Corrections, was attributable to service exclusively provided in the unincorporated areas. This percentage compares favorably with the 52.7% factor used in the original 1970 studies (Exhibits 1 and 2) and the factor of 47.26% used in the City update for the 1976-77 fiscal year (Exhibit 8).

26. During the trial Lieutenant Mangan of the Los Angeles County Sheriff's Department testified that the current annual charges to a contract city for a general law patrol unit was $393,000, and for a station detective $54,666. Lieutenant Mangan further testified that 100 general law service units were provided the unincorporated area and 35-38 to the contract cities. Lieutenant Mangan and Assistant Sheriff Edmonds testified that 2,724 deputies were in Patrol East and Patrol West.

27. The 1977-78 cost of general law patrol units assigned to the unincorporated area amounted to at least $39,300,000 (100 X $393,000). In Exhibit 3 to the Booz, Allen and Hamilton Report approximately 60% of the station detectives were assigned to the unincorporated area (204 out of 349) for the fiscal year 1970-71. In trial Exhibit 11 (County report dated May 21, 1973) $9,565,959 of costs for station detectives was allocated to the unincorporated area (91%) and only $850,098 (9%) to contract cities. Using the more conservative 60% factor, $18 million in costs for station detectives for 1977-78 should be allocated to the unincorporated area (60% X $30,000,000 (Approximate cost of 562 station detectives at $54,666)). Therefore, in 1977-78 a total of at least $57,000,000 in Sheriff's costs were provided to the unincorporated area for patrol and station detectives. These costs do not include certain county general overhead expenses.

28. In the County 1977-78 budget (Exhibit 34) at page 267, the Sheriff's net appropriations, not including custodial functions, is $140,771,736. Applying a 47% factor to this cost as done by the County in Exhibit 11, and by the City in Exhibit 8, a cost of $65.8 million for Sheriff's non-uniform services to the unincorporated area results. The original methodology developed by the County and the City in 1970 is substantiated by the unit costs developed

under the Booz, Allen and Hamilton Report and currently in use by the County and contract cities.

29. Pursuant to Evidence Code Sections 452 and 453 the trial Court has taken judicial notice of the County of Los Angeles Budget for the fiscal years ending June 30, 1979, and June 30, 1980.

30. Pursuant to Evidence Code Sections 452 and 453 the trial Court has taken judicial notice of the following four reports: (1) *Calif. State Controller, 1977-78 Annual Report, Financial Transactions Concerning Cities;* (2) *Calif. State Controller, 1978-79 Annual Report, Financial Transactions Concerning Cities;* (3) *Calif. State Controller, 1977-78 Annual Report, Financial Transactions Concerning Counties;* (4) *Calif. State Controller, 1978-79 Annual Report, Financial Transactions Concerning Counties.*

31. Exhibits 1 and 2 which studied the 1968-69 County fiscal year reflected a general County property tax revenue of $469,638,229 and a Sheriff's noncustodial budget of $43,358,024. The post Proposition 13 County budget for fiscal 1978-79 reflects general County property tax revenue of $610,264,390 and a Sheriff's non-custodial budget of $131,773,627.

32. The post Proposition 13 budget for the County of Los Angeles for fiscal 1978-79 was $3.6 billion for County Wide Funds as compared to $3.3 billion for fiscal 1977-78. After Proposition 13 the County budget increased by $300,000,000. The County 1977-78 budget reflected $1.1 billion in property taxes to balance the budget. The County 1978-79 budget reflected $600,000,000 in property taxes to balance, a decrease of $500,000,000 in property taxes from fiscal 1977-78.

33. The fiscal 1978-79 decrease of $500,000,000 in property tax revenue was replaced by $600,000,000 in increased state aid. Approximately the same amount of property tax revenue was available in fiscals 1977-78 and

1978-79 to finance non-uniform services. This situation resulted because the increased state aid was applicable to uniform services which had been financed from county general revenues in the past. SB 154 (Chapter 292 of 1978 Statutes) provided state aid for welfare and health costs previously financed from local funds.

34. There is no evidence in the record to indicate that any non-property tax revenues collected from residents of the City of Los Angeles are used to provide municipal-type services in the unincorporated area of the County.

35. Exhibit 24, *Analysis of Demographic and Economic Data Relating to City-County Relationship,* details in Table 1 the percent of persons and families in poverty in Los Angeles County as a whole, in the unincorporated and incorporated areas, and in the City of Los Angeles.

36. Exhibit 19, City of Los Angeles Community Analysis Bureau, *Income, Household Characteristics and Population, 1974, Part I and II,* contains the median family income for each zip code in the County of Los Angeles.

37. There now exists an actual and real controversy between plaintiffs and defendants relative to the constitutionality of the current financing system used by the defendants to finance the providing of non-uniform services to unincorporated areas of the County, the plaintiffs contend the financing of non-uniform services by the use of County general funds, attributable to the entire County, including property tax revenue which is the largest source of locally generated funds, is unconstitutional. Defendants contend that such services are not financed from property taxes collected from residents of the City of Los Angeles, and that even if they were so financed, such practice would be constitutional.

38. The Court further finds as a fact any fact stated under "Conclusions of Law" set forth below.

CONCLUSIONS OF LAW

1. The practice of the defendants of providing only certain services and benefits on a uniform countywide basis while providing other municipal-type services only on a non-uniform basis to unincorporated areas without charge, and financing both types of services by use of property tax revenues, contravenes the equal protection clause of the Federal Constitution and Article 1, Section 7, and Article 4, Section 16 of the California Constitution. Plaintiffs are unreasonably classified differently from taxpayers of unincorporated areas as to the financing of non-uniform services. Both contribute to the same general County property tax revenues used to finance non-uniform services, but plaintiffs, based on a geographic classification, are excluded from receiving such services without charge. This financing system does not further any legitimate state policy. Additionally, plaintiffs must finance identical services from their own jurisdictions. This financing system results in taxpayers of the unincorporated areas receiving privileges denied to taxpayers of incorporated areas.

2. The financing system used by the defendants to finance non-uniform services in the unincorporated area does not constitute a classification based on wealth.

3. Police protection, including its financing, is not a fundamental right of a California State or United States citizen for the purposes of State or Federal equal protection requirements.

4. The financing system employed by the defendants of using general County revenues to finance non-uniform services in the unincorporated area, does not contravene the due process clause of the 14th Amendment to the

Federal Constitution or the due process clause of the California State Constitution, Article 1, Section 7.

5. The practice of defendants of providing only certain services and benefits on a uniform countywide basis and providing other municipal-type services on a non-uniform basis to unincorporated areas without added charge, and financing both types of services by local County general revenues, including County property taxes which are levied uniformly in unincorporated and incorporated areas, does not deprive property taxpayers of incorporated areas of their property without due process of law in contravention of the 14th Amendment of the Federal Constitution and the due process clause of the California State Constitution. This financing system does not violate due process even though cities are legally precluded from receiving municipal-type services from the County without charge and city taxpayers must also finance municipal services, including law enforcement by their respective cities.

6. The defendant's practice of providing non-unifrom services to the unincorporated areas and subsidizing the same with County general funds, including the County general property tax revenue, attributable to the incorporated areas does not contravene Article 16, Section 6, of the California Constitution. The fact that the defendants are taking funds from one group of taxpayers, those of the incorporated areas, and applying them to the benefit of another group, the taxpayers of the unincorporated areas, does not constitute a gift of public funds by the defendants.

7. The defendants do not violate California Constitution Article 13, Section 24, by providing non-uniform services to the unincorporated areas and financing these services by the use of County general funds, including property tax revenue, which is mainly attributable to incorporated

areas. This practice does not constitute a County tax on inhabitants and property of incorporated areas, for what is to them a municipal purpose rather than a County purpose.

8. The voter approval of Proposition 13 at the June 6, 1978, election did not moot the instant case.

9. County regional parks, located in cities and the unincorporated area, which serve the entire County should be charged to the County as a whole.

10. Sheriff's patrol and station detectives and non-structural fire protection, which are rendered to the rural unincorporated areas, including State interest lands, the Angeles National Forest, and other areas recreational to the entire County, should be a charge against the County as a whole.

11. Countywide functions of the County Engineer and the Regional Planning Commission should be a charge against the County as a whole.

12. Animal Control Department costs for facilities and services should be apportioned to the cities or unincorporated areas which receive a service or which are serviced by a facility.

13. That plaintiffs have judgment against defendants declaring that the practice of the defendants of providing only certain services and benefits on a uniform countywide basis while providing other municipal-type services only on a non-uniform basis to unincorporated areas without charge, and financing both types of services by the use of County property tax revenue, contravenes the equal protection clause of the Federal Constitution and Article 1, Section 7, and Article 4, Section 16 of the California Constitution, as the practice relates to the financing of the non-uniform services in the unincorporated areas.

14. That defendants County of Los Angeles, Board of Supervisors of the County of Los Angeles, Harry L. Hufford, Mark Bloodgood and Peter J. Pitchess, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, be permanently enjoined from financing the providing of non-uniform services such as Sheriff's patrol and station detectives, County Engineer, Parks and Recreation, Regional Planning, Animal Control, and Forester and Fire Warden structural fire protection, including related costs for Workers' Compensation, Retirement, Motor Vehicles, and Insurance, to the unincorporated areas of the County of Los Angeles through the use of County property tax revenues, which are generated uniformity [sic] throughout the County. The defendants may use charges, assessments, or special taxes limited to the unincorporated areas to finance non-uniform services, and revenue wholly attributable to the unincorporated area such as Sales and Cigarette Tax, and Franchises. The defendants will have a reasonable time to take corrective measures. The Court will retain jurisdiction to assure compliance.

15. Any and all findings of fact herein which constitute or may be claimed or held to constitute Conclusions of Law are incorporated herein as if set forth in full.

Let judgment be entered accordingly.

DATED: October 20, 1981

Honorable Max F. Deutz
JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, say: I am a citizen of the United States and a resident of the County of Los Angeles. I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 N. Main Street, Los Angeles, California 1800 City Hall East

On October 2, 1981, I served the within

THIRD PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

on the person(s) indicated below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

JOHN H. LARSON, County Counsel
ROGER M. WHITBY, Principal Deputy County Counsel
648 Hall of Administration
Los Angeles, California 90012

/ / —Federal—I delcare that I am employed in the office of a member of the bar of this court at whose discretion the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 2, 1981, at Los Angeles, California.

IRA REINER, City Attorney
THOMAS C. BONAVENTURA, Senior Assistant City Attorney
RICHARD A. DAWSON, Assistant City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, California 90012
Telephone: (213) 485-5035

Attorneys for Plaintiffs
CITY OF LOS ANGELES, et al.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

CITY OF LOS ANGELES, et al., Plaintiffs, vs. THE COUNTY OF LOS ANGELES, et al., Defendants.	NO. C 109, 771 JUDGMENT Honorable Max F. Deutz Dept. 54

The above entitled matter came on regularly for trial on March 31, 1978, in Department 54 of the above entitled Court, the Honorable Max F. Deutz, Judge, presiding, sitting without a jury. The plaintiffs appeared by their attorneys of record, Burt Pines, City Attorney, Thomas C. Bonaventura, Senior Assistant City Attorney, by Richard A. Dawson, Assistant City Attorney. The defendants appeared by their attorney of record, John H. Larson, County Counsel, by Roger M. Whitby, Principal Deputy. The Court having examined and considered the proof offered by the parties, being fully advised in the premises, and the Court having made, signed and filed its Finding of Fact and Conclusions of Law;

IT IS HEREBY ADJUDGED AND DECLARED that the practice of the defendants of providing only certain

services and benefits on an uniform countywide basis while providing other municipal-type services only on a non-uniform basis to unincorporated areas without charge, and financing both types of services by the use of property tax revenues, contravenes the equal protection clause of the Federal Constition [sic] and Article 1, Section 7, and Article 4, Section 16, of the California Constitution, as the practice relates to the financing of the non-uniform services in the unincorporated areas;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants County of Los Angeles, Board of Supervisors of the County of Los Angeles, Harry L. Hufford, Mark Bloodgood, and Peter J. Pitchess, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, be permanently enjoined from financing the providing of non-uniform services such as Sheriff's patrol and station detectives, County Engineer, Parks and Recreation, Regional Planning, Animal Control, and Forester and Fire Warden structural fire protection, including related costs for Workers' Compensation, Retirement, and Motor Vehicles, to the unincorporated areas of the County of Los Angeles through the use of property tax revenues, which are generated uniformily [sic] throughout the County. The defendants may use fees or charges for services, assessments, or special taxes limited to the unincorporated areas to finance non-uniform services, and revenue wholly generated in the unincorporated area such as Sales and Cigarette Tax and Franchises. The defendants will have a reasonable time to take corrective measures. The Court will retain jurisdiction to assure compliance.

DATED: October 20, 1981

Honorable Max F. Deutz
JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, say: I am a citizen of the United States and a resident of the County of Los Angeles. I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 N. Main Street, Los Angeles, California 90012
1800 City Hall East

On October 2, 1981, I served the within

THIRD PROPOSED JUDGMENT

on the person(s) indicated below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

JOHN H. LARSON, County Counsel
ROGER M. WHITBY, Principal Deputy County Counsel
648 Hall of Administration
Los Angeles, California 90012

/ /—Federal—I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 2, 1981, at Los Angeles, California.

APPENDIX "B"

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

CITY OF LOS ANGELES, etc., et al., Plaintiffs and Respondents, v. COUNTY OF LOS ANGELES, etc., et al., Defendants and Appellants.	2d Civil No. 66066 (Super.Ct.No. C 109 771)

APPEAL from a judgment of the Superior Court of Los Angeles County. Max F. Deutz, Judge. Reversed with directions.

John H. Larson, County Counsel, Roger M. Whitby, Principal Deputy Counsel, for Defendants and Appellants.

Ira Reiner, City Attorney, Thomas C. Bonaventura, Senior Assistant City Attorney, Richard A. Dawson, Assistant City Attorney, for Plaintiffs and Respondents.

The City of Los Angeles and various of its elected officials in their capacity as taxpayers residing in the city (herein respondents) filed suit in 1974, naming as defendants County of Los Angeles and certain of its department heads and elected officials (herein appellants). Respondents sought declaratory relief and an injunction, challenging a practice utilized by the county. The practice at issue is

the allocation by the county of funds raised from property taxes on property located in an incorporated city to finance certain services to residents of unincorporated areas of the county.

After trial in March and April 1978, the judgment of the court declared that, "the practice of the defendants of providing only certain services and benefits on an [sic] uniform countywide basis while providing other municipal-type services only on a non-uniform basis to unincorporated areas without charge, and financing both types of services by the use of property tax revenues, contravenes the equal protection clause of the Federal Constitution and Article 1, Section 7, and Article 4, Section 16, of the California Constitution, as the practice relates to the financing of the non-uniform services in the unincorporated areas;".

The court ordered that appellants be enjoined from, "financing the providing of non-uniform services such as Sheriff's patrol and station detectives, County Engineer, Parks and Recreation, Regional Planning, Animal Control, and Forester and Fire Warden structural fire protection, including related costs for Workers' Compensation, Retirement, and Motor Vehicles, to the unincorporated areas of the County of Los Angeles through the use of property tax revenues, which are generated uniformily [sic] throughout the County. The defendants may use fees or charges for services, assessments, or special taxes limited to the unincorporated areas to finance non-uniform services, and revenue wholly generated in the unincorporated areas such as Sales and Cigarette Tax and Franchises."

This appeal followed.

Respondents have argued the case at the trial level and in this court on the premise that there are certain services performed by a county for residents of the county which

benefit all of the residents of the county, without regard to whether those residents live in an incorporated city or in unincorporated territory. Examples of this type of service are the courts, probation department and jails. These are referred to as "uniform services." There are other services which, it is argued, benefit only residents of unincorporated areas. These are referred to as "non-uniform services" and include sheriff patrol, county engineer, parks and recreation, regional planning, animal control and structural fire protection.[1]

The trial court made findings that, "8. The defendant, County of Los Angeles, acting through the other defendants, provides certain services to all parts of the County, whether incorporated or unincorporated area, such as courts, hospitals, welfare, health and jails. These services are designated as 'uniform services' because they are provided countywide without special charge to taxpayers of incorporated or unincorporated areas." "10. The defendant, County of Los Angeles, acting through the other defendants, also provides such services as Sheriff's Patrol and Detective services, County Engineer, Animal Control, Regional Planning, and local parks in the unincoproated [sic] areas. These services are designated as 'non-uniform services' because they are not provided to the same extent in cities as in unincorporated areas."

ISSUES

Appellants argue that the judgment of the trial court should be reversed because (1) the entire issue was rendered moot by the passage of Proposition 13; (2) there is no evidence of a tax subsidy of the unincorporated area of Los Angeles County by taxpayers of the City of Los Angeles; (3) as to any tax subsidy which might exist, any attempt to eliminate it may result in a greater inequity; (4)

[1]It appears from the record that appellant may have conceded at trial that this categorization was appropriate.

the present system of financing county government is not constitutionally impermissible; and (5) residents of cities receive benefit from services to unincorporated areas.

DISCUSSION

The trial court determined that under the state and federal Constitutions, the use by the county of property tax revenues to finance both uniform and non-uniform services denied equal protection to city taxpayers. The rationale was that property taxpayers in incorporated areas were obliged to pay both city property taxes and county property taxes to support city services, uniform county services and non-uniform county services. Property taxpayers in unincorporated areas, on the other hand, were required to pay only county property taxes, which supported uniform and non-uniform county services.

Each side presented evidence at trial illustrating the varying total property tax rate paid by residents of certain municipalities in the county, as compared with the varying total tax rate paid by residents of selected portions of unincorporated areas. The difference in total tax rate arose because, while the county portion of the rate was constant for all property in the entire county, the rates for city and municipal-type services, education and water district were not the same throughout the county. The result was that the total tax rate paid by property taxpayers depended on whether the real estate was situated in unincorporated or incorporated areas. Additionally, in incorporated areas, the rate varied from city to city. In unincorporated areas, the rate varied from community to community.

At the time of trial, city's taxpayers paid *both* city and county taxes. The trial court found this to be a denial of equal protection because residents of unincorporated areas of the county paid only county property tax and received benefits allegedly not provided to residents of

incorporated areas of the county. The benefits were funded, in part, by property taxes paid to the county by the residents of incorporated areas.

Shortly after trial in this matter and three and one-half years after the action was filed, at the 1978 primary election on June 6, 1978, article XIIIA was enacted by the voters.[2] Section 1(a) of that article provides, "The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties."

After article XIIIA became law, the Legislature directed that there shall be a single local property tax, shared by local government agencies designated by the Legislature. Immediately after article XIIIA of the Constitution became effective, the Legislature passed Revenue and Taxation Code section 2237, which provided,

"(a) Notwithstanding any other provision of law, except as provided in subdivision (b), no local agency, school district, county superintendent of schools, or community college district shall levy an ad valorem property tax, other than that amount which is equal to the amount needed to make annual payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978 or the amount levied pursuant to Part 10 (commencing with Section 15000) of Division 1 and Sections 39308, 39311, 81338, and 81341 of the Education Code. [¶] (b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four dollars ($4) per one hundred dollars ($100) of assessed value. The revenue from such tax shall be distributed, subject to the allocation

[2]This article is popularly referred to as Proposition 13.

and payment as provided in subdivision (d) of Section 33675 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college districts in accordance with the provisions of Section 26912 of the Goverment [sic] Code."

Revenue and Taxation Code section 2237 was repealed in 1980. Revenue and Taxation Code section 93, added in 1980, now provides, "(a) Notwithstanding any other provision of law, except as provided in subdivision (b), no local agency, school district, county superintendent of schools, or community college district shall levy an ad valorem property tax, other than that amount which is equal to the amount needed to make annual payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978 or the amount levied pursuant to Part 10 (commencing with Section 1500) of Division 1 and Sections 39308, 39311, 81338, and 81341 of the Edcuation [sic] Code. In determining the tax rate required for the purposes specified in this subdivision, the amount of the levy shall be increased to compensate for any allocation and payment of tax revenues required pursuant to subdivision (d) of Section 33670 and subdivision (d) of Section 33675 of the Health and Safety Code. [¶] (b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four dollars ($4) per one hundred dollars ($100) of assessed value and at an equivalent rate when the ratio prescribed in Section 401 is changed from 25 percent to 100 percent. The revenue from such tax shall be distributed, subject to the allocation and payment as provided in subdivision (d) of Section 33675 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college districts in accordance with the provisions of the Government Code."

With the adoption of article XIIIA, and implementing legislation, then, there is only a single local property tax rate. Thus, all city property taxpayers and all county property taxpayers pay the same ad valorem tax rate, currently one dollar per $100 of fully assessed value. (Rev. & Tax. Code, § 93, subdivision (b).)

In summary, since enactment of article XIIIA, residents of incorporated areas no longer pay a municipal property tax, they now pay only a county property tax. Residents of unincorporated areas of the county pay the same county tax. Further, article XIIIA has limited the amount of property taxes which may be assessed by the county. As a consequence, the property tax revenues the county receives have been significantly reduced.

The trial court had before it a pleading prepared in 1974 and challenging practices and procedures which were in effect in 1974. In paragraph 12 of the complaint, respondent alleged, "The expense of the County of Los Angeles in providing uniform and non-uniform services is financed to a *substantial* degree by the County general property tax which is assessed at the same rate in both the incorporated and unincorporated areas of the County. Property tax revenues go to the County general fund and are used for the payment of uniform and non-uniform services. The plaintiffs and other property taxpayers of the incorporated areas in the County of Los Angeles are bearing a portion of the cost of providing non-uniform services, which services they are legally prevented from receiving, while at the same time they are assessed and pay city property taxes for identical services which are provided by their own city jurisdictions." (Emphasis added.) In the findings of fact the court found, "The expense of the County of Los Angeles in providing uniform and non-uniform services is financed to a *substantial* degree by the use of County general revenues. A *significant* element of County general

revenues is the County general property tax." (Emphasis added.)

We conclude that the issue presented to the trial court was the constitutionality of a mechanism concerning property taxation and disbursements of revenue therefrom which has been dismantled by virtue of article XIIIA.

It is settled that an appellate court is to decide actual controversies by a judgment which can be carried into effect. The appellate court cannot render opinions " 'upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from a judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of plaintiff, to grant . . . any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal.' " (*Consol. etc. Corp.* v. *United A. etc. Workers* (1946) 27 Cal.2d 859, 863.) (See also *Paul* v. *Milk Depots, Inc.* (1964) 62 Cal.2d 129, 132; *Bell* v. *Board of Supervisors* (1976) 55 Cal.App.3d 629, 636; *Environmental Coalition of Orange County, Inc.* v. *Local Agency Formation Com.* (1980) 110 Cal.App.3d 164.)

In many cases where occurrence of "events" was responsible for creating the absence of actual controversy, the actual consequences triggering the lack of actual controversy were apparent. (See e.g., *Donato* v. *Bd. of Barber Examiners* (1943) 56 Cal.App.2d 916, (where plaintiff sought to enjoin adoption of minimum price schedules by barber examiners. The matter was dismissed in the trial court after demurrer was sustained without leave to amend. The case became moot because, before the appeal was decided, the minimum price schedule was adopted.); *Bell* v. *Bd. of Supervisors, supra*, 55 Cal.App.3d

629 (where legislation challenged by Bell on constitutional grounds was repealed by the legislative body pending appeal); *Paul* v. *Milk Depots, Inc., supra*, 62 Cal.2d 129 (where appeal from judgment denying injunction and civil penalties against a milk distributor was rendered moot, in part because the distributor's license was revoked and it went into bankruptcy after entry of judgment in the trial court.)

In support of their argument that the passage of article XIIIA has not rendered this action moot, respondents cite *City of Santa Barbara v. County of Santa Barbara* (1979) 94 Cal.App.3d 277. That case, however, arose in a factual setting far removed from the instant case. In *Santa Barbara*, the city sought to establish a county service area and the county denied the request. The court held that the rationale on which the board of supervisors denied the request was erroneous. The court observed, "The decision whether to create a county service area is not related to any consideration of existing tax revenues or the source of those revenues, but is a function solely of a factual determination whether specified services or the level of those services are being provided throughout the county on a uniform basis both within and without cities. How the service area will be financed once it is formed is a separate question, one to be resolved subsequently to formation and one upon the answer to which creation of this service area does not depend." (At p. 287.) It was for this reason, the court stated in a footnote, that the addition of article XIIIA to the state Constitution did not render that matter moot.

In the case before us, however, testimony at trial indicated that the 1977-1978 total budget for the County of Los Angeles (the pre-Proposition 13 era) was in the area of $3.6 billion dollars. The amount financed from local property taxes was $1,157,014,293. After passage

of article XIIIA, the amount of money realized by the county from property taxes was reduced. The record does not disclose either the percent of the county budget for 1978-1979 or later years which was financed from local property taxes or the dollar amount raised by property taxes for 1978-1979 or later years.[3]

CONCLUSION

Since 1978, when this case was tried, the method of financing local government has undergone massive changes. Those changes, in our view, render this action moot. The post-Proposition 13 financing problems, sources of revenue and levels of expenditure understandably have not been adequately addressed in the pleadings or in the trial court.

The facts upon which the judgment was rendered no longer are operative. The actual consequences of article XIIIA were not presented to the trial court and are not in the record before us. To entertain this appeal would be to engage impermissibly in a purely academic exercise. We must therefore reverse the judgment with directions to the court to dismiss the proceeding as moot. (*Paul* v *Milk Depots, Inc., supra*, 62 Cal.2d 129, 134.)

Because we reach the conclusion that this action is moot, we need not and do not reach the remaining errors urged upon us by appellants.

---

[3]According to the findings of fact, the 1978-1979 county budget reflected $600 million dollars in property taxes and there was an increase of $300 million dollars in the county budgeted expenditures.

DISPOSITION

The judgment is reversed with directions to the trial court to dismiss the matter as moot.

CERTIFIED FOR PUBLICATION

AMERIAN, J.

We concur:

McCLOSKY, Acting P.J.

ACKERMAN, J.*

_____ * Assigned by the Chairperson of the Judicial Council.

APPENDIX "C"

COURT OF APPEAL
SECOND DISTRICT
LOS ANGELES, CALIFORNIA
OCTOBER 27, 1983

CITY OF LOS ANGELES, et al.)
)
vs.) NO. 66066
)
COUNTY OF LOS ANGELES, et al.)

THE COURT:

PETITION FOR REHEARING DENIED.

CLAY ROBBINS, CLERK

APPENDIX "D"

MINUTES
SUPREME COURT
SAN FRANCISCO, DECEMBER 14, 1983

CITY OF LOS ANGELES, et al.	)	
	)	In re: 2
vs.	)	Civ. No. 66066
COUNTY OF LOS ANGELES, et al.	)	

RESPONDENTS' PETITION FOR HEARING DENIED.

APPENDIX "E"

2nd Civil No. 66066
(Superior Court No. C 109,771)

IN THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APELLATE DISTRICT

THE CITY OF LOS ANGELES, et al.,

Plaintiffs - Respondents,

vs.

COUNTY OF LOS ANGELES, et al.,

Defendants - Appellants.

Filed: February 11, 1984

NOTICE OF APPEAL
TO THE SUPREME COURT OF
THE UNITED STATES

IRA REINER, City Attorney
THOMAS C. BONAVENTURA,
Senior Assistant City Attorney
RICHARD A. DAWSON
Assistant City Attorney
1800 City Hall East
200 N. Main Street
Los Angeles, California 90012

Attorneys for Defendants - Appellees

Notice is hereby given that the CITY OF LOS ANGELES, TOM BRADLEY, Mayor of the City of Los Angeles, ERNANI BERNARDI, MARVIN BRAUDE, DAVID S. CUNNINGHAM, JOHN FERRARO, DONALD D. LORENZEN, LOUIS R. NOWELL, PAT RUSSELL, ARTHUR K. SNYDER, and ROBERT M. WILKINSON present or former members of the City Council of the City of Los Angeles and as taxpayers, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of California denying plaintiffs' Petition For Hearing entered in this action on December 14, 1983.

This appeal is taken pursuant to 28 U.S. C. Section 1257(2).

DATED: February 11, 1984.

IRA REINER, City Attorney
THOMAS C. BONAVENTURA, Senior
Assistant City Attorney
RICHARD A. DAWSON,
Assistant City Attorney

By _____
RICHARD A. DAWSON
Assistant City Attorney

Attorneys for Defendants-Appellees

APPENDIX "F"

§26912. Ad valorem property tax; state tax reimbursements to counties; allocations

(a) For the purposes of this section, a local agency includes a city, county, city and county, and special district, as such terms are defined in Article 1 (commencing with Section 2201) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code, if such local agency levied a property tax during the 1977-78 fiscal year or if a property tax was levied for such local agency for such fiscal year, except that the Bay Area Pollution Control District shall be considered a local agency.

(b) For the 1978-79 fiscal year only, the amount of revenue derived from levying a tax pursuant to subdivision (b) of Section 2237 of the Revenue and Taxation Code shall be allocated by the county auditor, subject to the allocation and payment of funds, as provided for in subdivision (b) of Section 33670 of the Health and Safety Code, to each local agency, school district, county superintendent of schools, and community college district in the following manner:

(1) (A) The auditor shall determine the local agency share of 1978-79 property tax revenue by dividing the amount of property tax revenue received by all local agencies in 1977-78 by the total amount of property tax revenue received by all local agencies, school districts, community college districts, and county superintendents of schools in the 1977-78 fiscal year, and multiplying the quotient by the total amount of revenue generated pursuant to subdivision (b) of Section 2237 of the Revenue and Taxation Code.

(B) For each local agency, the county auditor shall compute a factor equal to the average amount of property tax revenue received in the three fiscal years prior to the 1978-79 fiscal year by each local agency within the

county, divided by the average amount of property tax revenue received by all such agencies during the three fiscal years prior to the 1978-79 fiscal year. The county auditor shall multiply the factor for each local agency by the amount of revenue determined pursuant to subparagraph (A).

(C) Notwithstanding subparagraph (B), in each case where a local agency has been formed in the past three years and has assumed the duties of another local agency, it shall be entitled to the average amount of revenue for the prior three years of the local agency from whom it assumed its duties.

(D) For the * * * *purposes* of subparagraphs (A) and (B), local agency shall not include a local agency formed after January 1, 1976.

(2) (A) The county auditor shall determine the school share of the 1978-79 fiscal year property tax revenue by subtracting the local agency share, as determined under subparagraph (A) of paragraph (1) of this subdivision, from the total amount of revenue generated pursuant to subdivision (b) of Section 2237 of the Revenue and Taxation Code.

(B) For each school district, county superintendent of schools, and community college district, the county auditor shall compute a factor equal to the amount of property tax revenue received in the 1977-78 fiscal year by such district and the county superintendent of schools within the county divided by the total amount of property tax revenue received by all such districts and the county board of education in the 1977-78 fiscal year. The county auditor shall multiply the factor for each school district, county superintendent of schools, and community college district by the amount of revenue determined pursuant to subparagraph (A). For the purposes of this paragraph,

local agencies formed after January 1, 1976, shall be considered school districts.

(3) For the purpose of this subdivision, the amount of *proceeds of any* property tax *actually and separately* levied for the *specific* purpose of making annual payments for the interest and principal on outstanding general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978, including tax rates levied pursuant to Part 10 (commencing with Section 15000) of Division 1 of Section 39308, 39311, 81338, and 81341 of the Education Code, shall be excluded from all calculations.

(4) The amounts computed under this subdivision shall be the amount of property tax revenue to be allocated to each local agency for the 1978-79 fiscal year.

(5) As used in this section, "property tax revenue" includes the amount of state reimbursement for *the* homeowners' and business inventory * * * *exemptions.*

(c) For the 1978-79 fiscal year only, the amount of state reimbursement to each county with respect to property tax losses pursuant to the * * * *homeowners'* exemption under Section * * * *218* of the Revenue and Taxation Code, the business inventory exemption under Section * * * *219* of the Revenue and Taxation Code, and the special treatment accorded livestock, motion pictures and wine and brandy under * * * *Sections 5523, 988, and 922, respectively,* of the Revenue and Taxation Code, and shall be allocated by each county auditor, subject to the allocation and payment of funds, as provided in subdivision (b) of Section 33670 of the Health and Safety Code, to local agencies, school district, county superintendent of * * * *schools,* and community college districts within the county pursuant to the proportions established in subdivision (b). This subdivision shall not apply to reimburse-

ments with respect to tax rates levied to pay the interest or principal on outstanding general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978.

(d) For local agencies, school districts, and community college districts located in more than one county, the county auditor of each county in which such local agency or district is located shall, for the purposes of computing the amount for such local agency or district pusuant to paragraphs (1) and (2) of subdivision (b), treat the portion of the local agency or district located within that county as a local agency or district.

(Added by Stats.1978, c. 292, p. 606, §24, urgency, eff. June 24, 1978, Amended by Stats.1978, c. 332, p. 698, §24, urgency, eff. June 30, 1978; Stats.1979, c. 225, p. 478, §1, urgency, eff. July 9, 1979.)

APPENDIX "G"

§93. Levy by local agencies, school districts, county superintendents of schools, or community college districts; levy by counties

(a) Notwithstanding any other provision of law, except as provided in subdivision (b), no local agency, school district, county superintendent of schools, or community college district shall levy an ad valorem property tax, other than that amount which is equal to the amount needed to make annual payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978 or the amount levied pursuant to Part 10 (commencing with Section 15000) of Division 1 and Sections 39308, 39311, 81338, and 81341 of the Education Code. In determining the tax rate required for the purposes specified in this subdivision, the amount of the levy shall be increased to compensate for any allocation and payment of tax revenues required pursuant to subdivision (d) of Section 33670 and subdivision (d) of Section 33675 of the Health and Safety Code.

(b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four dollars ($4) per one hundred dollars ($100) of assessed value, *and at an equivalent rate when the ratio prescribed in Section 401 is changed from 25 percent to 100 percent.* The revenue from such tax shall be distributed, subject to the allocation and payment as provided in subdivision (d) of Section 33675 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college districts in accordance with the provisions of the Government Code.

(Added by Stats.1980, c. 1256, p. 4246, §1.5. Amended by Stats.1981, c. 261, p. 1342, §11.1)

Italicized indicates changes or additions by amendment

§95. Definitions

For the purpose of this chapter,

(a) "Local agency" means a city, county, * * * and special district * * *.

(b) "Jurisdiction" means a local agency, school district, community college district, or county superintendent of schools.

For jurisdictions located in more than one county, the county auditor of each county in which * * * *that* jurisdiction is located shall, for the purposes of computing the amount for * * * *that* jurisdiction pursuant to this chapter, treat the portion of the jurisdiction located within that county as a separate jurisdiction.

(c) "Property tax revenue" includes the amount of state reimbursement for the homeowners' and business inventory exemptions.

"Property tax revenue" does not include the amount of property tax levied for the purpose of making payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978, including tax rates levied pursuant to Part 10 (commencing with Section 15000) of Division 1 of, and Sections 39308, 39311, 81338, and 81341 of the Education Code, and Section 26912.7 of the Government Code.

(d) "Taxable assessed value" means total assessed value minus all exemptions other than the homeowners' and business inventory exemptions.

(e) "Jurisdictional change" includes a change of organization, as defined in Section 35027 of the Government Code, an incorporation, as defined in Section 35037 of the Government Code, a municipal reorganization, as defined in Section 35042 of the Government Code, a change

of organization, as defined in Section 56028 of the Government Code, a formation, as defined in Section 56042 of the Government Code, and a reorganization, as defined in Section 56068 of the Government Code. "Jursidictional change" also includes any change in the boundary of those special districts * * * which are not under the jurisdiction of a local agency formation commission * * *.

Jurisdictional change shall also include a functional consolidation where two or more local agencies, except two or more counties, exchange or otherwise reassign functions and any change in the boundaries of a school district or community college district or county superintendent of schools.

(f) "School entities" means school districts, community college districts, and county superintendents of schools.

(g) Except as otherwise provided in this subdivision, "tax-rate area" means a specific geographic area all of which is within the jurisdiction of the same combination of local agencies and school entities for the current fiscal year.

In the case of a jurisdictional change pursuant to Section 99, the area subject to * * * *the* change shall constitute a new tax-rate area, except that if the area subject to change is within the same combinations of local agencies and school entites as an existing tax-rate area, the two tax-rate areas may be combined into one tax-rate area.

(h) "State assistance payments" means:

(1) For counties * * *, amounts determined pursuant to subdivision (b) of Section 16260 of the Government Code, increased by the amount specified for each county pursuant to Section 94 of * * * *Chapter 282 of the*

Statutes of 1979, with the resultant sum reduced by an amount derived by the calculation made pursuant to Section 16713 of the Welfare and Institutions Code.

(2) For cities, 82.91 percent of the amounts determined pursuant to subdivisions (b) and (i) of Section 16250 of the Government Code plus for any city an additional amount equal to one-half of the amount of any outstanding debt as of June 30, 1978, for "museums" as shown in the State Controller's "Annual Report of Financial Transactions of Cities for Fiscal Year 1977-78."

(3) For special districts, 95.24 percent of the amounts received pursuant to Chapter 3 (commencing with Section 16270) of Part 1.5 of Division 4 of Title 2 of the Government Code, Section 35.5 of Chapter 332 of the Statutes of 1978, and Chapter 12 of the Statutes of 1979.

(i) "City clerk" means the clerk of the governing body of a city or city and county.

(j) "Executive officer" means the executive officer of a local agency formation commission.

(k) "City" means any city whether general law or charter, except a city and county.

(l) "County" means any chartered or general law county. "County" includes a city and county.

(m) "Special district" means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. "Special district" includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area, formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area. "Special district" includes the Bay Area Air Quality Management District. "Special district" does not include a city, a county, a school district or a

community college district. "Special district" does not include any agency which is not authorized by statute to levy a property tax rate. However, any special district authorized to levy a property tax by the statute under which the district was formed shall be considered a special district.

(Added by Stats.1979, c. 282, p. 1025, §59, urgency, eff. July 24, 1979. Amended by Stats.1980, c. 801, p. 2508, §6, imd. eff. July 28, 1980; Stats.1981, c. 242, p. 1253, §4, imd. eff. July 21, 1981.)

§96. Apportionment of property tax revenues by county auditor; 1979-1980 fiscal year

For the 1979-80 fiscal year only, property tax revenues shall be * * * *apportioned to each jurisdiction pursuant to this section and Section 97.5* by the county auditor, subject to the allocation and payment of funds as provided for in subdivision (b) of Section 33670 of the Health and Safety Code, * * * as follows:

(a) *For each tax rate area,* each local agency shall be allocated an amount of property tax revenue equal to the sum of the amount of property tax revenue allocated pursuant to Section 26912 of the Government Code to each local agency for the 1978-79 fiscal year, *as allocated to such tax rate area pursuant to paragraph (1) of subdivision (f) of Section 98,* modified by any adjustments required by Section 99, and * * * the amount of state assistance payments allocated to * * * *such tax rate area pursuant to paragraph (2) of Subdivision (f) of Section 98.*

(b) The auditor shall determine the school entities' share of the 1979-80 property tax revenue by subtracting the state assistance payments allocated to local agencies within the county for the 1978-79 fiscal year from the

aggregate amount of property tax revenue allocated pursuant to Section 26912 of the Government Code to all school entities within the county for the 1978-79 fiscal year. The amount of the difference shall be the * * * school entities' share of property taxes for fiscal year 1979-80, and shall be allocated to the school entities in the same proportion as the allocation made to such * * * *entities* for the 1978-79 fiscal year. *The amount for each school entity shall be allocated among its tax rate areas pursuant to paragraph (3) of subdivision (f) of Section 98.*

(c) The difference between the total amount of property tax revenue and the amounts allocated pursuant to subdivisions (a) and (b) shall be allocated pursuant to Section 98.

(d) For the purposes of computing property tax allocations for the 1978-79 fiscal year and each year thereafter, the county auditor shall recompute the 1978-79 property tax allocation for any city which levied a utility users' tax prior to 1978 but repealed such tax prior to December 31, 1977. For such cities, the term "property tax revenues for the 1975-76, 1976-77, and 1977-78 fiscal years" shall be deemed to include the aggregate of property tax and utility users' tax for those respective years.

(Added by Stats.1979, c. 282, p. 1025 §59, urgency eff. July 24, 1979. Amended by Stats.1979, c. 1161, p. 4366 §6.2, urgency, eff. Sept. 29, 1979; Stats.1980, c. 801, p. 2509, §7, imd. eff. July 28, 1980.)

§100. Request for reduction of amount; effective tax rate reduction; school entities; property tax allocations

(a) On or before August * * * *1, 1982,* and on or before August * * * *1* of each year thereafter, any jurisdiction may request that the amount computed for it pursuant to this chapter be reduced for the current fiscal year by a

specified amount. Upon such request, the county auditor shall compute an effective tax rate reduction by dividing the amount of property tax revenue to be reduced by the taxable assessed value on the secured roll of the jurisdiction and multiplying the quotient by 100. The effective tax rate reduction shall be applied to the taxable assessed value on each secured roll tax bill for property within the jurisdiction, and the resulting amount shall be subtracted from the property tax owed by the taxpayer which is attributable to the tax rate provided by subdivision (b) of Section 2237. This subtracted amount shall be shown on each such tax bill with a notation reading: "Tax reduction by (name of jurisdiction)." The same effective tax rate reduction shall be applied in a comparable manner to the taxable assessed value on the next succeeding unsecured roll tax bill for property within the jurisdiction, except that for the 1981-82 fiscal year any such rate reduction used on that year's unsecured roll shall be equal to the 1980-81 rate divided by four.

(b) Notwithstanding any other provision of law, if a school entity acts pursuant to subdivision (a), the state shall not increase school apportionments to such school entity to make up the reduction in property tax revenues.

(c) Effective tax rate reductions made pursuant to this section shall not be taken into account in computing property tax allocations pursuant to Sections 95 to 99, inclusive, of this chapter, except that for the 1981-82 fiscal year any such rate reduction used on that year's unsecured roll shall be equal to the 1980-81 rate divided by four.

(Added by Stats.1979, c. 282, p. 1025, §59, urgency, eff. July 24, 1979. Amended by Stats.1979, c. 1161, p. 4371, §6.7, urgency, eff. Sept. 29, 1979; Stats.1980, c. 801, p. 2517, §11.7, imd. eff. July 28, 1980; Stats.1981, c. 713, p. 2568, §9.)

Asterisks * * * indicate deletions by amendment

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 3340 Ocean Park Boulevard, Suite 3005, Santa Monica, California 90405; that on March 12, 1984, I served the within *Jurisdictional Statement* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Monica, California, addressed as follows:

Clerk, United States
Supreme Court
1 First Street, N.E.
Washington D.C. 20543
(Hand delivered: original and 40 copies)

John H. Larson,
County Counsel
Roger M. Whitby,
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500 West Temple Street
Los Angeles, California 90012

Honorable Max F. Deutz
Judge, Los Angeles Superior Court
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Los Angeles, California 90010

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 12, 1984, at Santa Monica, California.

Kirk W. Harney
(Original signed)

83 - 1505

No. ..-...

IN THE

Supreme Court of the United States

October Term, 1983

THE CITY OF LOS ANGELES, a municipal corporation, *et al.*,
Appellants,

vs.

COUNTY OF LOS ANGELES, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

MOTION TO DISMISS OR AFFIRM.

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Question Presented.

Is there currently any substantial federal question presented by the system of financing local government which existed in California prior to the passage of Proposition 13 in 1978, but which was eliminated by the passage of Proposition 13?

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

No. ..-...

IN THE

Supreme Court of the United States

October Term, 1983

THE CITY OF LOS ANGELES, a municipal corporation, *et al.*,

Appellants,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Appellees.

MOTION TO DISMISS OR AFFIRM.

Introductory Statement.

This an appeal from a final judgment of the Supreme Court of the State of California which sustained the decision of the Court of Appeal. This case was tried before the Superior Court of the State of California for the County of Los Angeles on March 31, and April 3 and 4, 1978. (Jurisdictional Statement, Appendix "A", p. 2a)

At the time of trial, city taxpayers paid *both* city and county property taxes. (Jurisdictional Statement, Appendix "B", p. 25a) The gravamen of the complaint was that taxpayers of the City of Los Angeles were required to pay a city property tax which in part was used to finance municipal services such as police patrol and detective services. City taxpayers also paid a County tax rate, a portion of which (they argued) was used to provide municipal-type services to residents of the unincorporated areas of the County. Thus, the argument went, city taxpayers were re-

quired to finance their own services and, in addition, were required to subsidize similar services to residents of unincorporated areas.

The trial court held that, under the State and federal constitutions, this practice denied equal protection to city taxpayers. (Jurisdictional Statement, Appendix "A", p. 16a) However, approximately two months after the trial, on June 6, 1978, California voters approved Proposition 13, which added Article XIIIA to the State constitution and eliminated separate city and county property taxes. Based upon this fundamental change, the Court of Appeal held that the case was moot. (Jurisdictional Statement, Appendix "A", p. 31a)

ARGUMENT.

I.

The California Courts Have Correctly Determined That This Case Is Moot.

Even taking the appellants' original theory at face value, local government financing was dramatically altered in California, and separate local tax rates were eliminated, by the passage of Proposition 13 some two months after the trial. Section 1(a) of Article XIIIA of the California Constitution now provides:

> "The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties."

The above provision appears to give the Legislature considerable (if not absolute) discretion in allocating property tax revenues. Thus, depending upon how the Legislature chooses to allocate local property tax revenues, a particular entity may receive an amount equal to, greater than, or less than, the total amount of property taxes collected from its residents.

Presumably, the Legislature could permit each local public entity to levy a separate property tax rate, so long as all such rates when applied to a particular parcel of property did not aggregate more than one percent of the fair market value of such property. This the Legislature has not seen fit to do.

The immediate response of the Legislature to Proposition 13 was the enactment of Section 2237 of the California Revenue and Taxation Code, which provided:

> "(a) Notwithstanding any other provision of law, except as provided in subdivision (b), no local agency,

school district, county superintendent of schools, or community college district shall levy an ad valorem property tax, other than that amount which is equal to the amount needed to make annual payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978.

(b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four dollars ($4) per one hundred dollars ($100) of assessed value. The revenue from such tax shall be distributed, subject to the allocation and payment as provided in subdivision (d) of Section 33675 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college districts in accordance with the provisions of Section 26912 of the Government Code."

Thus, Section 2237 created a single local property tax to be shared by those local entities designated by the Legislature. For the 1978-79 fiscal year, Government Code Section 26912 allocated the four-dollar rate among local entities in proportion to the property tax revenue which each such entity had received in the 1977-78 fiscal year.

Section 2237 has since been repealed, but Section 93 of the Revenue and Taxation Code now contains similar language.

For the 1979-80 fiscal year, Section 96(a) of the Revenue and Taxation Code provided:

"For each tax rate area, each local agency shall be allocated an amount of property tax revenue allocated pursuant to Section 26912 of the Government Code to each local agency for the 1978-79 fiscal year, allocated to such tax rate area pursuant to paragraph (1) of subdivision (f) of Section 98, modified by any adjustments required by Section 99, and the amount of state as-

sistance payments allocated to such tax rate area pursuant to paragraph (2) of subdivision (f) of Section 98."

Section 99 provides for adjustments in tax revenues in cases involving jurisdictional changes, city incorporations, district formations, etc.

Section 97 of the Revenue and Taxation Code provides that for the 1980-81 fiscal year and each fiscal year thereafter, property tax revenues shall be allocated by a fairly complicated formula which adjusts any incremental annual tax increase according to tax rate area. "Tax rate area" is defined by Section 95(g) as "a specific geographic area all of which is within the jurisdiction of the same combination of local agencies and school entities for the current fiscal year." In the years since 1978, the allocation of property tax revenues by the Legislature has progressively deviated from the property tax rates in effect prior to the passage of Proposition 13.

It is thus apparent that there is now a single local property tax which is shared by all local entities based upon legislative allocation, such allocation being subject to change from year to year. All residents of the County, whether they reside in incorporated or unincorporated territory, pay the same $4 tax rate. As a result of paying his $4 rate, a city taxpayer receives municipal services from the city and general County services from the County. Similarly, as a result of paying his $4 rate, a taxpayer residing in unincorporated territory receives similar municipal-type services provided by the County and the same general County services. Under these circumstances, it is difficult to perceive how city taxpayers are in any way subsidizing taxpayers of the unincorporated areas of the County. It could just as well be argued that taxpayers of the unincorporated area of the County are subsidizing city residents. As long as the services

are similar in character, it would not appear to matter whether they are provided by the city or by the County.

Since there is now only a single local property tax rate, rather than separate city, County, school district, etc. rates, the Legislature could presumably give all property tax revenues to the school districts, for example, and provide other funding for cities, counties and other entities.

Since there is no longer either a city or a County property tax, appellants' basic theory of the case as set forth in the pleadings and at the trial no longer has any validity and the case is moot.

It should also be noted in that connection that the basic evidence upon which appellants relied, and the model for most other evidence introduced by appellants, consisted of two studies (Exhibits A and B to the complaint) which were performed in 1969-70 based upon the 1968-69 Los Angeles County budget. This evidence is now 15 years old, and even if the world of local government financing had not been turned upside down by Proposition 13, such ancient history would be highly suspect as bearing any relationship to present-day reality.

Finally, this case is moot because the potential relief available to appellants was also eliminated by Proposition 13. Prior to Proposition 13, when there were separate city and County tax rates, if appellants had prevailed, presumably there would have been a reduction in the County property tax rate. However, since there is now no separate County property tax rate, no such reduction would occur, and residents of the City of Los Angeles would continue to pay the uniform $4 rate even if respondents prevailed on the merits in this case. The only result of such a victory by respondents would be that the County would be restricted in how it used certain property tax revenues.

The Court has consistently refused to review cases which have become moot because of a change in law. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 13 How. (54 U.S.) 518 (1852); *United States v. Alaska Steamship Co.*, 253 U.S. 113 (1920); *Hall v. Beals*, 396 U.S. 45 (1969); *Sanks v. Georgia*, 401 U.S. 144 (1971); *Richardson v. Wright*, 405 U.S. 208 (1972); *Diffenderfer v. Central Baptist Church*, 404 U.S. 412 (1972).

II.

The State Courts Have Not Upheld the Constitutionality of a State Statute.

Appellants purportedly appeal to this Court pursuant to 28 U.S.C. Section 1257(2), which provides for appeal in cases: "* * * where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Having determined that under California law the case was moot, the Court of Appeal expressly declined to decide whether the pre-Proposition 13 system of financing local government was constitutional. (Jurisdictional Statement, Appendix "B", pp. 29a, 31a)

The Court of Appeal further noted that the current financing system was not before the trial court, and hence to entertain an appeal would be ". . . to engage impermissibly in a purely academic exercise." (147 Cal.App.3d 952, 961 (1983), Jurisdictional Statement, Appendix "B", p. 31a)

Thus, there has been no determination by the California courts, even at the trial court level, of the question of whether the *current* system of financing local government is constitutional. (It should be noted that since Proposition 13, local governments in California have become increasingly dependent upon State income and sales tax revenues ap-

propriated by the Legislature, rather than property tax revenues, and hence the picture is considerably more complex than appellants have tried to portray it.)

While there may still be a controversy between the parties as to the present financing system, any such controversy is clearly not ripe for determination by this Court, and should await adjudication by the California courts.

Conclusion.

Since the appellants have not met the jurisdictional requirements of this Court, the appeal should be dismissed, or in the alternative, the judgment of the California Court of Appeal that the case is moot should be affirmed.

DATED: April 12, 1984.

Respectfully submitted,

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